

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA  
BEAUFORT DIVISION

Malcolm R. L. Melvin, III,	)	Case No. 9:19-cv-01043-DCC
	)	
Plaintiff,	)	
	)	
v.	)	<b>ORDER</b>
	)	
	)	
Federal Bureau of Prisons and State of	)	
South Carolina,	)	
	)	
Defendants.	)	
_____	)	

This matter is before the Court upon Plaintiff's complaint alleging violations of his civil rights pursuant to *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388, 397 (1971).<sup>1</sup> ECF No. 1. In accordance with 28 U.S.C. § 636(b) and Local Civil Rule 73.02(B)(2) (D.S.C.), this matter was referred to United States Magistrate Judge Bristow Marchant, for pre-trial proceedings and a Report and Recommendation ("Report"). On July 17, 2019, the Magistrate Judge directed Plaintiff to file certain documents to bring this action into proper form for further evaluation and possible service of process. ECF No. 11. Plaintiff failed to respond to the order. On August 20, 2019, the Magistrate Judge issued a Report recommending that this action be dismissed without prejudice pursuant to Federal Rule of Civil Procedure 41(b). ECF No.

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<sup>1</sup> This case was originally filed in the United States District Court for the Western District of Missouri; it was transferred into this District by Order dated April 2, 2019. ECF No. 4

15. The Magistrate Judge advised Plaintiff of the procedures and requirements for filing objections to the Report and the serious consequences if he failed to do so. Plaintiff has filed no objections, and the time to do so has passed.<sup>2</sup>

Defendants filed a motion for summary judgment on April 8, 2019. ECF No. 51. On April 9, 2019, this Court issued an Order pursuant to *Roseboro v. Garrison*, 528 F.2d 309 (4th Cir.1975), advising Plaintiff of the summary judgment/dismissal procedure and the possible consequences if he failed to respond adequately. ECF No. 52. Despite the explanation of the summary judgment/dismissal procedure and the possible consequences for failing to respond, Plaintiff did not respond to the motion. On August 20, 2019, the Magistrate Judge issued a Report recommending that this case be dismissed pursuant to Federal Rule of Civil Procedure 41(b) for failure to prosecute. ECF No. 56. The Magistrate Judge advised Plaintiff of the procedures and requirements for filing objections to the Report and the serious consequences if he failed to do so. Plaintiff filed no objections, and the time to do so has lapsed.

The Magistrate Judge makes only a recommendation to this Court. The recommendation has no presumptive weight, and the responsibility to make a final determination remains with the Court. See *Mathews v. Weber*, 423 U.S. 261 (1976). The Court is charged with making a de novo determination of any portion of the Report of the Magistrate Judge to which a specific objection is made. The Court may accept, reject, or modify, in whole or in part, the recommendation made by the Magistrate Judge or

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<sup>2</sup> On August 30, 2019, this Court received a letter from Plaintiff; upon review, the Court declines to construe the letter as objections to the Report. See ECF No. 17.

recommit the matter to the Magistrate Judge with instructions. See 28 U.S.C. § 636(b). The Court will review the Report only for clear error in the absence of an objection. See *Diamond v. Colonial Life & Accident Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005) (stating that “in the absence of timely filed objection, a district court need not conduct a *de novo* review, but instead must only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.” (citation omitted)).

As stated above, Plaintiff has not objected to the Magistrate Judge's Report. Accordingly, after considering the record in this case, the applicable law, and the Report of the Magistrate Judge, the Court finds no clear error and agrees with the recommendation of the Magistrate Judge. This action is dismissed with prejudice pursuant to Federal Rule of Civil Procedure 41(b) for failure to prosecute.

IT IS SO ORDERED.

s/ Donald C. Coggins, Jr.  
United States District Judge

September 19, 2019  
Spartanburg, South Carolina

#### **NOTICE OF RIGHT TO APPEAL**

The parties are hereby notified of the right to appeal this order pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure.